

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

**SESSION LAW 2002-169
HOUSE BILL 1307**

AN ACT TO AMEND THE MORTGAGE LENDING ACT TO AUTHORIZE LICENSURE OF EXCLUSIVE MORTGAGE BROKERS UNDER CERTAIN CIRCUMSTANCES, TO REQUIRE CRIMINAL HISTORY BACKGROUND CHECKS ON APPLICANTS AND LICENSEES UNDER THE MORTGAGE LENDING ACT, AND TO PROVIDE FOR THE APPROVAL OF EDUCATIONAL COURSES UNDER THE MORTGAGE LENDING ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-243.01 is amended by adding a new subdivision to read:

"(7a) Exclusive mortgage broker – An individual who acts as a mortgage broker exclusively for a single mortgage banker or single exempt person and who is licensed under the provisions of G.S. 53-243.05(c)(1a)."

SECTION 2. G.S. 53-243.01(14) reads as rewritten:

"(14) Mortgage broker. – A person who acts as a mortgage broker as that term is defined in subdivision (1) of this section. The term "mortgage broker" includes an exclusive mortgage broker, except when expressly provided otherwise."

SECTION 3. G.S. 53-243.05(a) reads as rewritten:

"(a) Any person, other than an exempt person, desiring to obtain a license ~~as a loan officer, mortgage banker, or mortgage broker~~ pursuant to this Article shall make written application for licensure to the Commissioner on forms prescribed by the Commissioner. In accordance with rules adopted by the Commission, the application shall contain any information the Commissioner deems necessary regarding the following:

- (1) The applicant's name and address and social security number.
- (2) The applicant's form and place of organization, if applicable.
- (3) The applicant's proposed method of and locations for doing business, if applicable.
- (4) The qualifications and business history of the applicant and, if applicable, the business history of any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the applicant, including:
 - (i) a description of any injunction or administrative order by any state or federal authority to which the person is or has been subject;
 - (ii) a conviction of a misdemeanor involving fraudulent dealings or moral turpitude or relating to any aspect of the residential mortgage lending business;
 - (iii) any felony convictions.
- (5) With respect to an application for licensing as a mortgage banker or broker, the applicant's financial condition, credit history, and business history; and with respect to the application for licensing as a loan officer, the applicant's credit history and business history.
- (6) The applicant's consent to a criminal history record check and a set of the applicant's fingerprints in a form acceptable to the Commissioner.

Refusal to consent to a criminal history record check may constitute grounds for the Commissioner to deny licensure to the applicant."

SECTION 4. G.S. 53-243.05(c) reads as rewritten:

"(c) In addition to the requirements under subsection (a) of this section, each applicant for licensure as a mortgage broker or mortgage banker at the time of application and at all times thereafter shall comply with the following requirements:

(1) ~~If Except as provided for in subdivision (1a) of this subsection, if the applicant is a sole proprietor, the applicant shall have at least three years of experience in residential mortgage lending or other experience or competency requirements as the Commissioner may impose. Experience as an exclusive mortgage broker shall not constitute mortgage-lending experience under this subdivision.~~

(1a) If an individual applicant to be licensed as a mortgage broker meets all other requirements for licensure under this section but does not meet the requirements of subdivision (1) of this subsection, the individual applicant may be licensed as an exclusive mortgage broker upon compliance with all of the following:

a. Successfully complete both a residential mortgage-lending course approved by the Commissioner of not less than 40 hours of classroom instruction, and a written examination approved by the Commissioner.

b. Act exclusively as a mortgage broker for a single mortgage banker licensee or single exempt mortgage banker for whom the broker shall be deemed an agent, who shall be responsible for supervising the broker as required by this Article, who shall sign the license application of the applicant, and who shall be jointly and severally liable with the broker for any claims arising out of the broker's mortgage lending activities.

c. Shall be compensated for the broker's mortgage brokering activities on a basis that is not dependent upon the loan amount, interest rate, fees, or other terms of the loans brokered.

d. Shall not handle borrower or other third-party funds in connection with the brokering or closing of mortgage loans.

(2) If the applicant is a general or limited partnership, at least one of its general partners shall have the experience as described under subdivision (1) of this subsection.

(3) If the applicant is a corporation, at least one of its principal officers shall have the experience as described under subdivision (1) of this subsection.

(4) If the applicant is a limited liability company, at least one of its managers shall have the experience as described under subdivision (1) of this subsection."

SECTION 5. G.S. 53-243.05(e) reads as rewritten:

"(e) Every applicant for initial licensure shall pay a filing fee of one thousand dollars (\$1,000) for licensure as a mortgage broker or mortgage banker or fifty dollars (\$50.00) for licensure as a loan officer-officer, in addition to the actual cost of obtaining credit reports and State and national criminal history record checks."

SECTION 6. G.S. 53-243.05(i) reads as rewritten:

"(i) If the Commissioner determines that an applicant meets the qualifications for licensure and finds that the financial responsibility, character, and general fitness of the applicant are such as to command the confidence of the community and to warrant belief that the business will be operated honestly and fairly, the Commissioner shall issue a license to the applicant. In addition, for an applicant qualifying as an exclusive mortgage broker, the Commissioner shall determine if the mortgage broker/mortgage banker relationship is in the public interest."

SECTION 7. G.S. 53-243.06 reads as rewritten:

"§ 53-243.06. License renewal; termination.

(a) All licenses issued by the Commissioner under the provisions of this Article shall expire annually on the 30th day of June following issuance or on any other date that the Commissioner may determine. The license shall become invalid after that date unless renewed. A license may be renewed 45 days prior to the expiration date by compliance with subsection (b1) of this section and by paying to the Commissioner Commissioner, in addition to the actual cost of obtaining credit reports and State and national criminal history record checks as the Commissioner may require, a renewal fee as follows:

- (1) Licensed mortgage bankers shall pay an annual fee of five hundred dollars (\$500.00) and one hundred dollars (\$100.00) for each branch office.
- (2) Licensed mortgage brokers shall pay an annual fee of five hundred dollars (\$500.00) and one hundred dollars (\$100.00) for each branch office. Licensed exclusive mortgage brokers shall pay an annual fee of five hundred dollars (\$500.00).
- (3) Licensed loan officers shall pay an annual fee of fifty dollars (\$50.00).

(b) If a license is not renewed prior to the applicable expiration date, then an additional two hundred fifty dollars (\$250.00) in addition to the renewal fee under subsection (a) of this section shall be assessed as a late fee to any renewal. In the event a licensee fails to obtain a reinstatement of the license within 90 days after the date the license expires, the Commissioner may require the licensee to comply with the requirements for the initial issuance of a license under the provisions of this Article.

(b1) When required by the Commissioner, the licensee shall furnish to the Commissioner the licensee's consent to a criminal history record check and a set of the licensee's fingerprints in a form acceptable to the Commissioner. Refusal to consent to a criminal history record check may constitute grounds for the Commissioner to deny renewal of licensure to the licensee.

(c) Licenses issued under this Article are not assignable. Control of a licensee shall not be acquired through a stock purchase or other device without the prior written consent of the Commissioner. The Commissioner shall not give written consent if the Commissioner finds that any of the grounds for denial, revocation, or suspension of a license pursuant to G.S. 53-243.12 are applicable to the acquiring person."

SECTION 8. G.S. 53-243.07 reads as rewritten:

"§ 53-243.07. Continuing education.

(a) As a condition of license renewal, the Commissioner may adopt rules to require continuing education of licensees under this Article for the purpose of enhancing the professional competence and professional responsibility of ~~mortgage bankers, mortgage brokers, and loan officers~~ all licensees. The rules may include criteria for:

- (1) The content of continuing education courses.
- (2) Accreditation of continuing education sponsors and programs.
- (3) Accreditation of videotape or other audiovisual programs.
- (4) Computation of credit.
- (5) Special cases and exemptions.
- (6) General compliance procedures.
- (7) Sanctions for noncompliance.

(b) Annual continuing professional education requirements shall be determined by the Commissioner. However, the requirements shall not exceed eight credit hours within a one-year period.

(c) The Commissioner may require education providers of the fundamentals mortgage lending course required under the provisions of G.S. 53-243.05(b)(2) and the continuing education courses required under this section to file information regarding the contents and materials of proposed courses to satisfy the education requirements with the Commissioner for review and approval. The Commissioner may set fees for the

initial and continuing review of courses for which credit hours will be granted. The initial filing fee for review of materials shall not exceed five hundred dollars (\$500.00) and the fee for continued review shall not exceed two hundred fifty dollars (\$250.00) per annum per course offered."

SECTION 9. G.S. 53-243.08 reads as rewritten:

"§ 53-243.08. Managing principals and branch managers.

Each mortgage broker or mortgage banker licensed under this Article shall have a managing principal who operates the business under that person's full charge, control, and supervision. Mortgage bankers and mortgage brokers, other than exclusive mortgage brokers, may operate branch offices subject to the requirements of this Article. Each principal and branch office of a mortgage broker or mortgage banker licensed under this ~~Article~~ Article, other than an exclusive mortgage broker qualifying under G.S. 53-243.05(c)(1a), shall have a manager who meets the experience requirements under G.S. 53-243.05(c)(1). The managing principal for a licensee's business may also serve as the branch manager of one of the licensee's branch offices. Each mortgage broker or mortgage banker licensed under this Article shall file a form as prescribed by the Commissioner indicating the business's designation of managing principal and branch manager for each branch and each individual's acceptance of the responsibility. Each mortgage broker or mortgage banker licensed under this Article shall notify the Commissioner of any change in its managing principal or branch manager designated for each branch. Any licensee who does not comply with this provision shall have the licensee's license suspended pursuant to G.S. 53-243.12 until the ~~licensee~~ licensee, other than an exclusive mortgage broker, complies with this section. Any individual licensee who operates as a sole proprietorship shall be considered a managing principal for the purposes of this Article."

SECTION 10. G.S. 53-243.12 is amended by adding a new subsection to read:

"(l) In addition to the authority to require criminal history background checks as set forth in G.S. 53-243.05 and G.S. 53-243.06, the Commissioner shall have the authority to require a criminal history background check at any other time as a condition of continued licensure. Upon the request of the Commissioner, a licensee shall furnish to the Commissioner the licensee's consent to a criminal history record check and a set of the licensee's fingerprints in a form acceptable to the Commissioner. Refusal to consent to a criminal history record check under this subsection may constitute grounds for the Commissioner to suspend or revoke the license of the licensee."

SECTION 11. Article 19A of Chapter 53 of the General Statutes is amended by adding a new section to read:

"§ 53-243.16. Criminal history record checks.

The Department of Justice may provide a criminal record check to the Commissioner for a person who has applied for or holds a mortgage broker, exclusive mortgage broker, or loan officer license through the Commissioner under this Article. The Commissioner shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Commissioner shall keep all information pursuant to this section privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge a fee for each applicant for conducting the checks of criminal history records authorized by this section."

SECTION 12. This act is effective when it becomes law and applies to persons who apply for licensure or licensure renewal under Article 19A of Chapter 53 of the General Statutes on or after that date.

In the General Assembly read three times and ratified this the 3rd day of October, 2002.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 3:13 p.m. this 23rd day of October, 2002